

IN THE HIGH COURT OF JUDICATURE AT PATNA

Appeals against the judgment and order dated 21.09.1998 passed in S.Tr. No. 645/109 of 1992/92 by the Additional Sessions Judge-VII, Rohtas at Sasaram.

Criminal Appeal (SJ) No. 377 of 1998

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1. Lal Mohar Gosain, Son of Sheo Mangal Gosain.
 2. Ganga Dayal Gosain, Son of late Kedar Gosain.
 3. Mundrika Gosain, Son of late Jairam Gosain.
 4. Suresh Gosain, Son of Jagdish Gosain.
 5. Suresh Gosain, Son of Ganga Dayal Gosain.
 6. Dhaneshwari Devi alias Dhaneshari Devi, Wife of Ganga Dayal Gosain.
- All resident of Village Chaurasi Mathia, Police Station-Surajpura, District-Rohtas.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

Criminal Appeal (SJ) No. 422 of 1998

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Judge Gosain, Son of Ganga Dayal Gosain, Resident of Village Chaurasi Mathia, Police Station-Surajpura, District-Rohtas.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No. 377 of 1998)

For the Appellant/s : Mr. K. N. Choubey, Sr. Adv.
Mr. A. N. Choubey, Adv.
Mr. Nagendra Dubey, Adv.

For the Respondent/s : Dr. Indihar Kumari, APP.

(In CR. APP (SJ) No. 422 of 1998)

For the Appellant/s : Mr. K. N. Choubey, Sr. Adv.
Mr. Ambuj Nayan Choubey, Adv.
Mr. Nagendra Dubey, Adv.

For the Respondent/s : Mr. C. Jawahar, APP.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 22-01-2014

Anjana Prakash, J.

1. On the last occasion the cases were listed

for hearing without the Lower Court Records since it were old matters and the Counsel for the Appellants was directed to produce a copy of the deposition which he has done and, hence, the Court is proceeding to hear the matter.

2. The Appellants have been convicted under Sections 304B and 201/34 IPC and sentenced to RI for ten years and seven years respectively by the Additional Sessions Judge-VII, Rohtas at Sasaram in S.Tr. No. 645/109 of 1992/92 by judgment and order dated 21.09.1998.

3. The prosecution case according to the Chowkidar, Ramdhari Yadav was that on 13.10.1991 he got an information that the Appellants have killed the daughter-in-law and on such information he went to their house. However, no male member was present there and the women folk refused to disclose anything. He thereafter went outside of the village and found Appellants going with a dead body on a cot and then he gave such information to the Dafadar, Ajay Kumar Singh. The accused persons left the dead body and an hour later returned variously armed and took away the dead body and burnt it. When he went to the Police Station he did not find any Officer In-charge and later on when the Police Officers came they saw the dead body



having been burnt. The allegation was that she has been murdered for ends of dowry by the in-laws.

4. The prosecution in all examined ten witnesses whereas the defence produced a letter to prove that in fact the deceased had been married with Judge Gosain before 1981 and, therefore, the case could not be filed under Section 304B IPC.

5. P.W. 1, Janardan Gosain stated that he had heard that the wife of Judge Gosain had died on account of stomache ache. Since he did not support the case of the prosecution he was declared hostile.

6. P.W. 2, Shyam Bihari Singh has also been declared hostile.

7. P.W. 3, Ajay Kumar Singh was the Dafadar who stated that he had learnt that a half burnt dead body had been seized by the Chowkidar and when he reached there and found the Appellant standing there the Informant told him that they had been detained along with a dead body. However, he does not state anything about the deceased having been murdered.

8. P.W. 4, Lal Mohar Singh has stated that he heard somebody's screaming from the house of the Appellants for help in the house of the Appellants at about 5 P.M. thereafter he had seen a dead body having been detained by the Chowkidar and the Dafadar.




However, in his cross-examination he conceded that he was examined in the case after two days and his attention was drawn to his earlier statement that he had not stated that he had heard any woman screaming of help from the house of the Appellants. A suggestion of enmity was given to him to which he denied.

9. P.W. 5, Ramdhari Yadav is the village Chowkidar who supports the version given out in the First Information Report. However, his evidence is completely denied on the point of demand of dowry and murder and he has deposed only on the factum of last rites of the deceased.

10. P.W. 6, Fuljhariya Devi is the mother of the deceased. She allegedly stated that her daughter had been burnt to death by the accused persons for ends of dowry. Surprisingly, she does not identify the accused persons in the dock. She was suggested that in fact the deceased have been married about ten years ago to which she denied. She also stated that the children of the deceased were still living with the Appellants. She was cross-examined on the point that she had not stated about demands of dowry and the stage of investigation. She also stated that the daughter had never been assaulted in front of her.

11. P.W. 7, Bhim Gosain is the brother of the





deceased who also generally supports the factum. He stated that her sister did not live with her in-laws because she was tortured. He also stated that four months after having been left of the village he had learnt that his daughter had been murdered and thereafter cremated. His attention was drawn to the earlier statement given under Section 161 Cr.P.C. with regard to the demand of dowry, torture for ends of the same and the details of her stay at her in-laws.

12. P.W. 8, Ram Bachan Giri is a co-villager of the deceased who stated that he on alarm that the Appellants were beating the deceased and had burnt her he reached there and saw that smoke was coming out from the house. It was thereafter that the Chowkidar came and detained the dead body. He completely changes version of the occurrence. He conceded that he had not gone inside the house.

13. P.W. 9, Hari Narayan Prasad is the Investigating Officer who had never visited the place of occurrence. His attention was drawn to the earlier statement of the witnesses with regard to the screaming of the deceased or as to when the deceased had been married and with regard to demands of dowry or that the witnesses having reached on hearing alarm and saw smoke coming out from the house of the Appellant. He,

thus, belies the entire prosecution case on all material particulars.

14. In view of the discussion of the nature of evidence that has transpired against the Appellants, in my opinion, it would be highly unsafe to maintain the conviction of the Appellants. Hence, the appeals are allowed and the order of conviction and sentence passed against the Appellants on 21.09.1998 by the Additional Sessions Judge-VII, Rohtas at Sasaram in S.Tr. No. 645/109 of 1992/92 is set aside. The Appellants are discharged of the liability of their bail bonds.

15. The Appeals stand allowed.

(Anjana Prakash, J.)

Patna High Court, Patna
Dated, the 22nd January, 2014
NAFR/Vikash/-